

APPEAL NO. 021863  
FILED SEPTEMBER 9, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on June 28, 2002. The hearing officer determined that the appellant's (claimant) compensable injury of \_\_\_\_\_, includes a thoracic strain injury, and that it does not include the cervical spine. The claimant appealed, arguing essentially that the hearing officer erred in determining that the compensable injury did not include his cervical spine. The respondent (carrier) filed a response urging affirmance.

DECISION

Affirmed.

The claimant attached evidence to his appeal that was not offered at the CCH. Documents submitted for the first time on appeal are generally not considered unless they constitute newly discovered evidence. Texas Workers' Compensation Commission Appeal No. 93111, decided March 29, 1993. To constitute "newly discovered evidence," the evidence would need to have come to appellant's knowledge since the hearing; it must not have been due to lack of diligence that it came to his knowledge no sooner; it must not be cumulative; and it must be so material it would probably produce a different result upon a new hearing. See Black v. Wills, 758 S.W.2d 809 (Tex. App.-Dallas 1988, no writ). Upon our review, the evidence does not meet the requirements for newly discovered evidence and will not be considered on appeal.

The hearing officer did not err in reaching the complained-of determination. The extent-of-injury issue involved questions of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence, including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). In view of the evidence presented, we cannot conclude that the hearing officer's determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **LIBERTY INSURANCE CORPORATION** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEMS  
350 NORTH ST. PAUL STREET, SUITE 2900  
DALLAS, TEXAS 75201.**

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Veronica Lopez  
Appeals Judge

CONCUR:

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Judy L. S. Barnes  
Appeals Judge

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Philip F. O'Neill  
Appeals Judge